

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

TASTY ONE, LLC,
Plaintiff.

V.

EARTH SMARTE WATER, LLC, et al.,

Defendants.

Case No. 2:20-cv-01625-APG-NJK

PROTECTIVE ORDER

1. A. PURPOSES AND LIMITATIONS

As discovery in this action may involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted, this Court enters the following Protective Order. This Order does not confer blanket protections on all disclosures or responses to discovery. The protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. Further, as set forth in Section 12.3, below, this Protective Order does not entitle the parties to file confidential information under seal. Rather, when the parties seek permission from the Court to file material under seal, the parties must comply with Local Rule IA 10-5 and with any pertinent orders issued in this case.

1 B. GOOD CAUSE STATEMENT

2 In light of the nature of the claims and allegations in this case and the
 3 representations that discovery in this case may involve the production of confidential
 4 records, and in order to expedite the flow of information, to facilitate the prompt
 5 resolution of disputes over confidentiality of discovery materials, to adequately
 6 protect information the parties are entitled to keep confidential, to ensure that the
 7 parties are permitted reasonable necessary uses of such material in connection with
 8 this action, to address their handling of such material at the end of the litigation, and
 9 to serve the ends of justice, a protective order for such information is justified in this
 10 matter. The parties shall not designate any information/documents as confidential
 11 without a good faith belief that such information/documents have been maintained in
 12 a confidential, non-public manner, and that there is good cause or a compelling reason
 13 why it should not be part of the public record of this case.

14 2. DEFINITIONS

15 2.1 Action: The instant action: *Tasty One, LLC v. Earth Smarte Water, LLC*, Case No. 2:20-cv-01625-APG-NJK (D. Nev.).

16 2.2 Challenging Party: a Party or Non-Party that challenges the designation
 17 of information or items under this Order.

18 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
 19 how it is generated, stored or maintained) or tangible things that qualify for protection
 20 under Federal Rule of Civil Procedure 26(c), and as specified above in the Good
 21 Cause Statement.

22 2.4 “HIGHLY CONFIDENTIAL -- ATTORNEYS’ EYES ONLY”
 23 Information or Items: extremely sensitive “CONFIDENTIAL” Information or Items,
 24 the disclosure of which to another Party or Non-Party would create a substantial risk
 25 of serious harm that could not be avoided by less restrictive means.

26 2.5 Counsel: Outside Counsel of Record and House Counsel (as well as their
 27 support staff).

1 2.6 Designating Party: a Party or Non-Party that designates information or
2 items that it produces in disclosures or in responses to discovery as
3 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL -- ATTORNEYS’ EYES
4 ONLY.”

5 2.7 Disclosure or Discovery Material: all items or information, regardless
6 of the medium or manner in which it is generated, stored, or maintained (including,
7 among other things, testimony, transcripts, and tangible things), that are produced or
8 generated in disclosures or responses to discovery in this matter.

9 2.8 Expert: a person with specialized knowledge or experience in a matter
10 pertinent to the litigation who has been retained by a Party or its counsel to serve as
11 an expert witness or as a consultant in this Action.

12 2.9 House Counsel: attorneys who are employees of a party to this Action.
13 House Counsel does not include Outside Counsel of Record or any other outside
14 counsel.

15 2.10 Non-Party: any natural person, partnership, corporation, association, or
16 other legal entity not named as a Party to this action.

17 2.11 Outside Counsel of Record: attorneys who are not employees of a party
18 to this Action but are retained to represent or advise a party to this Action and have
19 appeared in this Action on behalf of that party or are affiliated with a law firm which
20 has appeared on behalf of that party, and includes support staff.

21 2.12 Party: any party to this Action, including all of its officers, directors,
22 employees, consultants, retained experts, and Outside Counsel of Record (and their
23 support staffs).

24 2.13 Producing Party: a Party or Non-Party that produces Disclosure or
25 Discovery Material in this Action.

26 2.14 Professional Vendors: persons or entities that provide litigation support
27 services (e.g., photocopying, videotaping, translating, preparing exhibits or
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1 demonstrations, and organizing, storing, or retrieving data in any form or medium)
2 and their employees and subcontractors.

3 2.15 Protected Material: any Disclosure or Discovery Material that is
4 designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL --
5 ATTORNEYS’ EYES ONLY.”

6 2.16 Receiving Party: a Party that receives Disclosure or Discovery Material
7 from a Producing Party.

8 3. SCOPE

9 The protections conferred by this Order cover not only Protected Material (as
10 defined above), but also (1) any information copied or extracted from Protected
11 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material;
12 and (3) any deposition testimony, conversations, or presentations by Parties or their
13 Counsel that might reveal Protected Material, other than during a Court hearing or at
14 trial.

15 Any use of Protected Material during a Court hearing or at trial shall be
16 governed by the orders of the presiding judge. This Order does not govern the use of
17 Protected Material during a Court hearing or at trial.

18 4. DURATION

19 Even after final disposition of this litigation, the confidentiality obligations
20 imposed by this Order shall remain in effect until a Designating Party agrees
21 otherwise in writing or a Court order otherwise directs. Final disposition shall be
22 deemed to be the later of (1) dismissal of all claims and defenses in this Action, with
23 or without prejudice; and (2) final judgment herein after the completion and
24 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
25 including the time limits for filing any motions or applications for extension of time
26 pursuant to applicable law.

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1 5. DESIGNATING PROTECTED MATERIAL

2 5.1 Exercise of Restraint and Care in Designating Material for Protection.

3 Each Party or Non-Party that designates information or items for protection under this
4 Order must take care to limit any such designation to specific material that qualifies
5 under the appropriate standards. The Designating Party must designate for protection
6 only those parts of material, documents, items, or oral or written communications that
7 qualify so that other portions of the material, documents, items, or communications
8 for which protection is not warranted are not swept unjustifiably within the ambit of
9 this Order.

10 Mass, indiscriminate, or routinized designations are prohibited. Designations
11 that are shown to be clearly unjustified or that have been made for an improper
12 purpose (e.g., to unnecessarily encumber the case development process or to impose
13 unnecessary expenses and burdens on other parties) may expose the Designating Party
14 to sanctions.

15 If it comes to a Designating Party's attention that information or items that it
16 designated for protection do not qualify for protection, that Designating Party must
17 promptly notify all other Parties that it is withdrawing the inapplicable designation.

18 5.2 Manner and Timing of Designations. Except as otherwise provided in
19 this Order (*see, e.g.*, second paragraph of Section 5.2(a) below), or as otherwise
20 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
21 under this Order must be clearly so designated before the material is disclosed or
22 produced.

23 Designation in conformity with this Order requires:

24 (a) for information in documentary form (e.g., paper or electronic
25 documents, but excluding transcripts of depositions), that the Producing Party affix at
26 a minimum, the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL --
27 ATTORNEYS' EYES ONLY" to each page that contains protected material. If only
28 a portion or portions of the material on a page qualifies for protection, the Producing

1 Party also must clearly identify the protected portion(s) (e.g., by making appropriate
2 markings in the margins).

3 A Party or Non-Party that makes original documents available for inspection
4 need not designate them for protection until after the inspecting Party has indicated
5 which documents it would like copied and produced. During the inspection and before
6 the designation, all of the material made available for inspection shall be deemed
7 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants
8 copied and produced, the Producing Party must determine which documents, or
9 portions thereof, qualify for protection under this Order. Then, before producing the
10 specified documents, the Producing Party must affix the “CONFIDENTIAL”, or
11 “HIGHLY CONFIDENTIAL -- ATTORNEYS’ EYES ONLY” legend to each page
12 that contains Protected Material. If only a portion or portions of the material on a
13 page qualifies for protection, the Producing Party also must clearly identify the
14 protected portion(s) (e.g., by making appropriate markings in the margins).

15 (b) for testimony given in depositions that the Designating Party identifies
16 on the record, before the close of the deposition as protected testimony.

17 (c) for information produced in some form other than documentary and for
18 any other tangible items, that the Producing Party affix in a prominent place on the
19 exterior of the container or containers in which the information is stored the legend
20 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL -- ATTORNEYS’ EYES
21 ONLY.” If only a portion or portions of the information warrants protection, the
22 Producing Party, to the extent practicable, shall identify the protected portion(s).

23 **5.3 Inadvertent Failures to Designate.** If timely corrected, an inadvertent
24 failure to designate qualified information or items does not, standing alone, waive the
25 Designating Party’s right to secure protection under this Order for such material.
26 Upon timely correction of a designation, the Receiving Party must make reasonable
27 efforts to assure that the material is treated in accordance with the provisions of this
28 Order.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of confidentiality at any time that is consistent with the Court's Scheduling Order.

6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process under Local Rule 26-6(c).

6.3 The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn the confidentiality designation, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation until the Court rules on the challenge.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this Action only for prosecuting, defending, or attempting to settle this Action. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the Action has been terminated, a Receiving Party must comply with the provisions of Section 13 below.

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “CONFIDENTIAL” only to:

(a) the Receiving Party's Outside Counsel of Record in this Action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this Action;

(b) the officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this Action;

(c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(d) the Court and its personnel;

(e) private court reporters and their staff to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(f) professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information;

(h) during their depositions, witnesses, and attorneys for witnesses, in the Action to whom disclosure is reasonably necessary provided: (1) the deposing party requests that the witness sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and (2) they will not be permitted to keep any confidential information unless they sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the Court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material may be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Protective Order; and

(i) any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

7.3 Disclosure of “HIGHLY CONFIDENTIAL -- ATTORNEYS’ EYES ONLY” Information or Items. Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY CONFIDENTIAL” only to:

(a) the Receiving Party's Outside Counsel of Record in this Action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this Action;

(b) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this Action and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(c) the Court and its personnel;

(d) private court reporters and their staff to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(e) professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(f) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information; and

(g) any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED
PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a Court order issued in other litigation that compels disclosure of any information or items designated in this Action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL -- ATTORNEYS’ EYES ONLY,” that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or Court order unless prohibited by law;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or Court order shall not produce any information designated in this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL -- ATTORNEYS’ EYES ONLY” before a determination by the Court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission, or unless otherwise required by the law or Court order. The Designating Party shall bear the burden and expense of seeking protection in that Court of its confidential material and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive from another Court.

9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE
PRODUCED IN THIS LITIGATION

(a) The terms of this Order are applicable to information produced by a Non-Party in this Action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL -- ATTORNEYS’ EYES ONLY.” Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party's confidential information in its possession, and the Party is

1 subject to an agreement with the Non-Party not to produce the Non-Party's
2 confidential information, then the Party shall:

3 (1) promptly notify in writing the Requesting Party and the Non-Party
4 that some or all of the information requested is subject to a confidentiality agreement
5 with a Non-Party;

6 (2) promptly provide the Non-Party with a copy of the Protective Order
7 in this Action, the relevant discovery request(s), and a reasonably specific description
8 of the information requested; and

9 (3) make the information requested available for inspection by the Non-
10 Party, if requested.

11 (c) If a Non-Party represented by counsel fails to commence the process for
12 meeting-and-conferring and, if necessary, filing motion practice (*see, e.g.*, Local Rule
13 26-6) within 14 days of receiving the notice and accompanying information or fails
14 contemporaneously to notify the Receiving Party that it has done so, the Receiving
15 Party may produce the Non-Party's confidential information responsive to the
16 discovery request. If an unrepresented Non-Party fails to seek a protective order from
17 this Court within 14 days of receiving the notice and accompanying information, the
18 Receiving Party may produce the Non-Party's confidential information responsive to
19 the discovery request. If the Non-Party timely seeks a protective order, the Receiving
20 Party shall not produce any information in its possession or control that is subject to
21 the confidentiality agreement with the Non-Party before a determination by the Court
22 unless otherwise required by the law or Court order. Absent a Court order to the
23 contrary, the Non-Party shall bear the burden and expense of seeking protection in
24 this Court of its Protected Material.

25 10. **UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

26 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
27 Protected Material to any person or in any circumstance not authorized under this
28 Protective Order, the Receiving Party must immediately (a) notify in writing the

1 Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve
2 all unauthorized copies of the Protected Material, (c) inform the person or persons to
3 whom unauthorized disclosures were made of all the terms of this Order, and (d)
4 request such person or persons to execute the “Acknowledgment and Agreement to
5 Be Bound” (Exhibit A).

6 11. INADVERTENT PRODUCTION OF PRIVILEGED OR
7 OTHERWISE PROTECTED MATERIAL

8 When a Producing Party gives notice to Receiving Parties that certain
9 inadvertently produced material is subject to a claim of privilege or other protection,
10 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
11 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
12 may be established in an e-discovery order that provides for production without prior
13 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
14 parties reach an agreement on the effect of disclosure of a communication or
15 information covered by the attorney-client privilege or work product protection, the
16 parties may incorporate their agreement into this Protective Order.

17 12. MISCELLANEOUS

18 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
19 person to seek its modification by the Court in the future.

20 12.2 Right to Assert Other Objections. No Party waives any right it otherwise
21 would have to object to disclosing or producing any information or item on any
22 ground not addressed in this Protective Order. Similarly, no Party waives any right
23 to object on any ground to use in evidence of any of the material covered by this
24 Protective Order.

25 12.3 Filing Protected Material.

26 A Party that seeks to file under seal any Protected Material must comply with
27 Local Rule IA 10-5 and with any pertinent orders issued in this case.

1 A party seeking to file a confidential document under seal must file a motion
2 to seal and must comply with the Ninth Circuit's directives in *Kamakana v. City and*
3 *County of Honolulu*, 447 F.3d 1172 (9th Cir. 2006).

4 The Court has adopted electronic filing procedures. Attorneys must file
5 documents under seal using the Court's electronic filing procedures. *See* Local Rule
6 IA 10-5. Papers filed with the Court under seal must be accompanied with a
7 concurrently-filed motion for leave to file those documents under seal. *See* Local
8 Rule IA 10-5(a).

9 The Court has approved this blanket protective order to facilitate discovery
10 exchanges. But there has been no showing, and the Court has not found, that any
11 specific documents are secret or confidential. The parties have not provided specific
12 facts supported by declarations or concrete examples to establish that a protective
13 order is required to protect any specific trade secret or other confidential information
14 pursuant to Rule 26(c) or that disclosure would cause an identifiable and significant
15 harm. The Ninth Circuit has held that there is a presumption of public access to
16 judicial files and records, and that parties seeking to maintain the confidentiality of
17 documents attached to nondispositive motions must show good cause exists to
18 overcome the presumption of public access. *See Kamakana* 447 F.3d at 1179. Parties
19 seeking to maintain the secrecy of documents attached to dispositive motions must
20 show compelling reasons sufficient to overcome the presumption of public access.
21 *Id.* at 1180. All motions to seal must address the applicable standard and explain why
22 that standard has been met. The fact that a court has entered a blanket stipulated
23 protective order and that a party has designated a document as confidential pursuant
24 to that protective order does not, standing alone, establish sufficient grounds to seal a
25 filed document. *See Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1133
26 (9th Cir. 2003); *see also Beckman Indus., Inc. v. Int'l Ins. Co.*, 966 F.2d 470, 476 (9th
27 Cir. 1992).

1 If the sole ground for a motion to seal is that the opposing party (or non-party)
2 has designated a document as confidential, the designator shall file (within seven days
3 of the filing of the motion to seal) either (1) a declaration establishing sufficient
4 justification for sealing each document at issue or (2) a notice of withdrawal of the
5 designation(s) and consent to unsealing. If neither filing is made, the Court may order
6 the document(s) unsealed without further notice.

7 13. **FINAL DISPOSITION**

8 After the final disposition of this Action, as defined in Section 4, within 60 days
9 of a written request by the Designating Party, each Receiving Party must return all
10 Protected Material to the Producing Party or destroy such material. As used in this
11 subdivision, “all Protected Material” includes all copies, abstracts, compilations,
12 summaries, and any other format reproducing or capturing any of the Protected
13 Material. Whether the Protected Material is returned or destroyed, the Receiving
14 Party must submit a written certification to the Producing Party (and, if not the same
15 person or entity, to the Designating Party) by the 60 day deadline that (1) identifies
16 (by category, where appropriate) all the Protected Material that was returned or
17 destroyed and (2) affirms that the Receiving Party has not retained any copies,
18 abstracts, compilations, summaries or any other format reproducing or capturing any
19 of the Protected Material. Notwithstanding this provision, Counsel are entitled to
20 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing
21 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
22 reports, attorney work product, and consultant and expert work product, even if such
23 materials contain Protected Material. Any such archival copies that contain or
24 constitute Protected Material remain subject to this Protective Order as set forth in
25 Section 4.

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14. ENFORCEMENT

Any violation of this Order may be punished by any and all appropriate measures including, without limitation, contempt proceedings and/or monetary sanctions.

IT IS SO ORDERED.

DATED: September 14, 2021



Nancy J. Koppe
United States Magistrate Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Protective Order that was issued by the United States District Court for the District of Nevada on _____ in the case of _____. I agree to comply with and to be bound by all the terms of this Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the District of Nevada for the purpose of enforcing the terms of this Protective Order, even if such enforcement proceedings occur after termination of this action. I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my Nevada agent for service of process in connection with this action or any proceedings related to enforcement of this Protective Order.

Date:

City and State where sworn and signed: _____

Printed name:

Signature: